ACAP
Association for Community Affiliated Plans

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Testimony by Margaret A. Murray, CEO, ACAP to the House Committee on Ways and Means

Full Committee Hearing: Protecting Americans with Pre-Existing Conditions
Tuesday, January 29, 2019

Chairman Neal, Ranking Member Brady, and Members of the Committee:

ACAP is an association of 60 not-for-profit and community-based Safety Net Health Plans (SNHPs) located in 29 states. Our member plans provide coverage to more than 20 million individuals enrolled in Medicaid, the Children's Health Insurance Program (CHIP), the Marketplaces, and Medicare Special Needs Plans for dually-eligible individuals, including over 765,000 Marketplace enrollees. Sixteen of ACAP's SNHP members offer qualified health plans (QHPs) or basic health plans (BHPs) in the Marketplaces, including one that newly entered the Marketplace for 2019.

Since the passage of the Affordable Care Act (ACA), ACAP plans have advocated to reinforce each leg of the law's foundational "three-legged stool": affordable insurance options, a near-universal risk pool, and meaningful coverage. ACAP plans and many other issuers have embraced these ideals and offered coverage that provides high-value, affordable, and comprehensive care to consumers who had previously been subject to underwriting and other exclusionary practices. Without any one of these "legs," the rest is not sustainable. However, Short-Term, Limited-Duration Insurance (STLDI) health plans threaten both these coverage gains as well as the stability of the health insurance Marketplaces.

STLDI plans have been available for many years; however, their intended function has fundamentally changed. STLDI plans had historically been used to fill gaps in coverage for a short period of time. However, they lack comprehensive consumer protections such as pre-existing coverage requirements—not to mention they are permitted to underwrite coverage and even engage in post-claims underwriting and rescissions. As ACA coverage rolled out, brokers and issuers of such plans began marketing them as alternatives to ACA coverage instead of as true "short-term" coverage. In response to this changing nature, the Obama Administration limited STLDI plans in 2016 by issuing a regulation restricting these plans' coverage terms to three months or less with renewals of no more than one year. However, in August of 2018, the Trump Administration changed course and issued a final rule that expands the coverage period for STLDI plans up to 12 months with coverage renewal up to 36 months. Although STLDI plans may be an effective method of stop-gap coverage for consumers with coverage gaps due to changing employment or life situations, these new coverage duration limits permit them to effectively be sold as an alternative to ACA-compliant plans. Yet it goes without saying that much of the goal of the ACA was to curb the abuses like those that STLDI plans regularly engage in.

Beyond the now twelve-month coverage duration, there are few similarities between STLDI and ACA-compliant coverage. While ACA-compliant plans must have a Medical Loss Ratio (MLR) of at least 80 percent—which requires 80 percent or more of earned premium dollars to be spent on medical care, as opposed to administrative costs and profits—many STLDI plans have an MLR of about 50 percent and this ratio is not regulated whatsoever.[1] While ACA-compliant plans are required to cover Essential Health Benefits (including maternity care, prescription drugs, and mental health and substance use disorder treatment), STLDI plans are not mandated to do so. And, while ACA-compliant plans are prohibited from underwriting, imposing lifetime and annual limits, and excluding coverage for pre-existing conditions, STLDI plans are exempt from these criteria.[2] For *any* consumer with significant health coverage needs, whether acute or chronic, STLDI plans do not provide meaningful coverage; for consumers with pre-existing conditions, it is safe to say that STLDI plans are wholly inadequate.

The distinctions between ACA-compliant coverage and STLDI plans are clear on paper, yet the marketing of STLDI plans can prove harmful to well-intentioned consumers. During Open Enrollment for 2019, the growing market for STLDI plans was on full display: one marketing scan conducted by the Georgetown University Center on Health Insurance Reforms (CHIR) found that in every state, over half of all results from websites that are designed to suggest appropriate health insurance products to consumers directed them to STLDI or other non-ACA compliant insurance products. In fact, during this year's Open Enrollment, less than 20 percent of CHIR's searches including phrases like "cheap health insurance" or "ACA enroll" returned sites offering solely ACA-compliant coverage.[3] These data demonstrate that despite many consumers' initiatives to purchase more comprehensive, ACA-compliant coverage, it may be difficult for them to know what they are purchasing and may effectively be duped into purchasing STLDI coverage when they need something more comprehensive. Or, a consumer may not fully understand the potential impact of purchasing an SLTDI product, particularly consumers that don't realize they have a pre-existing condition or what an STLDI plan might deem a pre-existing condition.

For example, a woman in Illinois went to the hospital with heavy vaginal bleeding resulting in a five-day hospital stay and a hysterectomy, only to be denied coverage under her short-term plan

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[1] Huth, Erik and Karcher, Jason. "The short-term/limited-duration insurance rule and the potential impact on health insurance markets." *Milliman.* August 2018. http://us.milliman.com/uploadedFiles/insight/2018/The_STLDI_rule.pdf; National Association of Insurance Commissioners. "2017 Accident and Health Policy Experience Report." 2018. https://naic.org/prod_serv/AHP-LR-18.pdf

[2] Lucia, Kevin et al. "State Regulation of Coverage Options Outside of the Affordable Care Act: Limiting the Risk to the Individual Market." *The Commonwealth Fund.* March 2018. https://www.commonwealthfund.org/sites/default/files/documents/___media_files_publications_fund_report_2018_mar_lucia_state_regulation_alternative_coverage_options_rev.pdf.

[3] Corlette, S. et al. "The Marketing of Short-Term Health Plans: An Assessment of Industry Practices and Regulatory Responses." *Georgetown University Health Policy Institute.* January 2019. https://www.rwjf.org/en/library/research/2019/01/the-marketing-of-short-term-health-plans.html.

on the ground that her menstrual cycle constituted a pre-existing condition. Additionally, a man in Washington, D.C. also purchased a short-term plan with a stated maximum payout of $750,000; when he sought coverage for a $211,000 bill resulting from a hospitalization, he was

paid only $11,780, in part due to a denial of coverage based on his father's medical history. While these may be particularly egregious examples, they demonstrate unscrupulous nature of STLDI plans, which generally engage in whatever practices necessary to avoid paying claims. One of the easiest ways to do so is to deem the claims as related to a pre-existing condition.

Finally, the proliferation of STLDI plans will have a deleterious impact on the risk pool and the stability of the health insurance Marketplaces. STLDI plans cost less money because they offer less coverage. These plans are expected to pull healthier and younger consumers out of the ACA-compliant individual risk pool, effectively segmenting risk in the individual market. The marketing research above further demonstrates that STLDI plans will not only be attractive but also readily available to consumers moving forward. To better understand the effect of STLDI plans on the individual market, ACAP commissioned the actuarial firm Wakely Consulting Group to model the impact of the Administration's proposed rule.[4] Wakely estimated that in 2019, adverse selection would decrease enrollment in the ACA-compliant individual market by between 400,000 and 790,000 enrollees. In addition, Wakely estimated that STLDI plans, in tandem with the repeal of the individual mandate, will contribute to a rise in premiums of up to 12.8 percent and a reduction in enrollment of up to 26.3 percent in the individual market over the course of 4 to 5 years. For ACAP plans and others offering comprehensive QHP coverage that covers pre-existing conditions, this landscape is hostile; if ACA-compliant plans exit the Marketplaces, fewer affordable, comprehensive health insurance options will remain.

It is for these reasons that ACAP decided to file suit about this Administration's short-term, limited-duration insurance regulation. As noted above, the regulation effectively permits the exact type of plan the ACA was intending to outlaw to be sold in direct competition with ACA-compliant plans. We believe this is an inappropriate interpretation of the law. Regulations are intended to carry out law, however, in this case, the regulation is undermining the law and the ability of plans like ACAP's member plans to offer comprehensive, ACA-compliant coverage.

Conclusion

In conclusion, ACAP thanks you for the opportunity to provide feedback to the Committee and for your efforts to ensure protections for consumers with pre-existing conditions and other vulnerable populations. ACAP and its member plans are dedicated to serving Marketplace enrollees, including those with pre-existing conditions and we appreciate the Committee's attention to this important issue. We look forward to providing with additional feedback or guidance. Please contact Heather Foster, Vice President of Marketplace Policy

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[4] Cohen, M. et al. "Effect of Short-Term Limited Duration Plans on the ACA-Compliant Individual Market." *Wakely Consulting Group*, 2018. http://www.communityplans.net/wp-content/uploads/2018/04/Wakely-Short-Term-Limited-Duration-Plans-Report.pdf

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